

REMARKS

The office action of August 13, 2003 has been reviewed and its contents carefully noted. Reconsideration of this case, as amended, is requested. Claims 1 through 89 and 91-92 remain in this case. Claims 91 and 92 have been added by this response. Claim 90 has been cancelled. The Applicants reserve the right to pursue claim 90 in a divisional application.

Restriction Requirement

1. The Examiner has made a restriction requirement and has identified four groups as follows:

Group I - recited in claims 1-73 and 85-89.

Group II - recited in claims 74-78.

Group III- recited in claims 79-84.

Group IV- recited in claim 90.

Applicant respectfully elects Group I, recited in claims 1-73, 85-89 and new claims 91-92. This requirement for restriction is respectfully traversed.

The MPEP states the following with regard to stating a prima facie case of restriction between patentably distinct inventions:

“There are two criteria for a proper requirement for restriction between patentably distinct inventions:

1) The inventions must be independent (see MPEP 802.01, 806.04, 808.01) **or distinct as claimed** (see MPEP 806.05-806.05(i)); and

2) There must be a **serious burden on the examiner** if restriction is not required (see MPEP 803.02, 806.04(a) - 806.04(j), 808.01(a) and 808.02).

GUIDELINES

Examiners must provide reasons and/or examples to support conclusions, but need not cite documents to support the requirement in most cases. **Where plural inventions are capable of being viewed as related in two ways, both applicable criteria for distinctness must be demonstrated to support a restriction requirement...**For purposes of the initial requirement a serious burden on the examiner may be prima facie shown if the examiner shows by appropriate explanation either separate classification, separate status in the art, or a different field of search as defined in MPEP 808.02.” (MPEP 803)

The claims in Groups I-III recite related inventions. Independent claims 1, 74, and 79 recite a semiconductor laser, a photodetector, and an amplifier, respectively. Each of these apparatuses have related (albeit independent and distinct) claimed components: a bottom reflector, a top reflector, and a cavity located between the bottom reflector and the top reflector. The resonant optical mode in each of these devices is tilted with respect to both the normal to the lateral plane and the lateral plane itself, which is a novel element of the present invention.

“If the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to independent or distinct inventions”. (MPEP 803) Distinct inventions do not create a burden on the Examiner that is sufficient to justify a restriction requirement without a showing of the need for separate searches. Since claims 1, 74, and 79 are related, a search of claim 1 would find all of the art for claims 74 and 79.

These three inventions would be searched within the same classes and subclasses. Even if the inventions would be classified separately, a thorough search of the prior art for any of the inventions would include the classes and subclasses of the other inventions.

In addition, new independent claim 91 clearly illustrates the relatedness between independent claims 1, 74, and 79. This generic claim claims a semiconductor device. In dependent claim 92, the semiconductor device is selected from the group consisting of: a semiconductor diode laser, a photodetector, and an optical amplifier.

The Applicants request that the restriction requirement be withdrawn with respect to Groups I-III.

Applicants believe the claims are patentable over the prior art, and that this case is now in condition for allowance of all claims therein. Such action is thus respectfully requested. If the Examiner disagrees, or believes for any other reason that direct contact with Applicants' attorney would advance the prosecution of the case to finality, he is invited to telephone the undersigned at the number given below.

"Recognizing that Internet communications are not secured, I hereby authorize the PTO to communicate with me concerning any subject matter of this application by electronic mail. I understand that a copy of these communications will be made of record in the application file."

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